

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/428,203	10/27/99	OKUNJII	003/172/SAP

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HM12/1002

EXAMINER

FLOOD, M

ART UNIT	PAPER NUMBER
1651	4

DATE MAILED: 10/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/428,203	Applicant(s) Okunji et al.
Examiner Michele Flood	Group Art Unit 1651

Responsive to communication(s) filed on Oct 27, 1999

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-29 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claims 1-29 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12, drawn to a biologically active extract from at least one plant selected from the consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum, Glossocalyx brevipes and Napolenonaea imperialis, classified in class 424, subclass 195.1.
 - II. Claims 13-19, drawn to a method of preparing a biologically active extract from at least one plant selected from the group consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum, Glossocalyx brevipes and Napolenonaea imperialis, classified in class 424, subclass 195.1.
 - III. Claim 20, drawn to a topical composition comprising a biologically active extract from at least one plant selected from the group consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum, Glossocalyx brevipes and Napolenonaea imperialis in an oral carrier, classified in class 424, subclass 78.02.
 - IV. Claim 21, drawn to a topical composition comprising a biologically active extract from at least one plant selected from the group consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum,

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Glossocalyx brevipes and Napolenonaea imperialis in a topical carrier, classified in class 424, subclass 58.

- V. Claim 22, drawn to an intravenous composition comprising a biologically active extract from at least one plant selected from the group consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum, Glossocalyx brevipes and Napolenonaea imperialis in an intravenous carrier, classified in class 424, subclass 455.
- VI. Claims 23-26, drawn to a method of treating a fungal or protozoal disease in a mammal comprising applying a biologically active extract from at least one plant selected from the group consisting of Aframomum aulocacarpus, Aframomum danelli, Dracaena arborea, Eupatorium odoratum, Glossocalyx brevipes and Napolenonaea imperialis, classified in class 424, subclass 404.
- VII. Claim 27, drawn to a compound, classified in class 568, subclass 424.
- VIII. Claim 28, drawn to a compound, classified in class 549, subclass 401.
- IX. Claim 29, drawn to a compound, classified in class 549, subclass 332.

2. The inventions are distinct, each from the other because of the following reasons:

3. Inventions VI-VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different groups are directed to three different compounds which are separate and patentably distinct.

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4. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different product, as evidenced by the varied products made by the instantly disclosed invention, wherein multiple extracts are used to make topical, oral, and intravenous compositions containing the instantly disclosed plant extracts of different genera and species.

5. Inventions III-V and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product such as conventional drugs for the treatment of fungal infections, such as Itraconazole or Amphotericin B, and for the treatment of protozoan infections, Chloroquine phosphate or clindamycine.

6. Inventions VII-IX are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different groups are directed to three different chemical compounds, and thus are distinct inventions.

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7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

8. Because these inventions are distinct for the reasons given above and the search required for one Group is not required for another Group, restriction for examination purposes as indicated is proper.

9. This application contains claims directed to the following patentably distinct species of the claimed invention: the distinct ingredients of claims 1, 13, 20-23, and the compounds of claims 27-29.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. A telephone call was made to Thomas G. Wiseman on September 26, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432.

mcf

September 26, 2000



LEON B. LANKFORD, JR.
PRIMARY EXAMINER